

Message Text

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TAGS: ETRD, EEC

SUBJECT: JOINT VENTURES: EC COMMISSION DEVELOPS

ITS POLICY

REF: EC BRUSSELS A-182

1. SUMMARY: IN KEEPING WITH ITS RECENTLY PUBLISHED POLICY REGARDING JOINT VENTURES, THE EC COMMISSION HAS APPROVED 3 JOINT VENTURES AND REFUSED EXEMPTIONS TO TWO OTHERS. THE LATEST APPROVAL INVOLVES THFKDS COMPANY DE LAVAL AND THE DUTCH FIRM STORK. THE POLICY STATES THAT EXEMPTIONS OF UP TO TEN YEARS WILL BE GRANTED FOR JOINT VENTURES WHICH RESULT IN SUBSTANTIAL ECONOMIC BENEFITS AND DEVELOPMENT OF NEW TECHNOLOGY OR PRODUCTS. EXEMPTIONS WILL NOT BE GRANTED WHEN JOINT VENTURES APPRECIABLY REDUCE COMPETITION IN A GIVEN MARKET, INDICATIONS EXIST THAT THE JOINT VENTURE WILL LEAD TO CLOSER COOPERATION AMONGST FIRMS POSSESSING A SUBSTANTIAL MARKET SHARE OR WHERE A LESS RESTRICTIVE AGREEMENT WOULD PRODUCE THE SAME BENEFITS. END SUMMARY.

2. THE 6TH ANNUAL REPORT ON COMPETITION POLICY SET

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FORTH THE COMMISSION GUIDELINES REGARDING JOINT VENTURES (REF). IT STATED THAT APPROVAL WOULD BE GRANTED ON A CASE BY CASE BASIS. EXEMPTIONS TO ARTICLE 85 (1) WHICH PROHIBITS AGREEMENTS, DECISIONS AND PRACTICES WHICH DISTORT OR RESTRICT COMPETITION WOULD BE GRANTED UNDER ARTICLE 85 (3) ONLY WHEN SUBSTANTIAL OBJECTIVE BENEFITS OFFSET THE DISADVANTAGES FOR COM-

PETITION. THE COMMISSION HAS SINCE APPROVED THREE JOINT VENTURES. THE FIRST INVOLVED KEWA, A JOINT VENTURE BY BAYER, HOECHS, GELSENBERG AND NUKEM, DESIGNED TO CONSTRUCT AND OPERATE A LARGE-SCALE NUCLEAR FUEL REPROCESSING PLANT AND TO MARKET THE REPROCESSED PRODUCT. EXEMPTION WAS GRANTED ON THE GROUNDS THAT THE BENEFITS FROM THIS SPECIAL ACTION OUTWEIGHED THE RESTRICTION OF COMPETITION. THE SECOND CASE, VACUUM INTERRUPTERS, INVOLVING ASSOCIATED ELECTRICAL INDUSTRIES, LTD. AND REYROLLE PARSONS LTD., WAS GRANTED ON THE GROUNDS THEY WERE DEVELOPING A NEW PRODUCT. THE THIRD APPROVED JOINT VENTURE INVOLVES THE US FIRM DE LAVAL, AN ASSOCIATE OF TRANSAMERICA CORP. AND THE DUTCH FIRM STORK, AN ASSOCIATE OF VMF, IS DESIGNED TO COMBINE THEIR PRODUCTION AND MARKETING ACTIVITIES IN EUROPE AND THE MIDEAST FOR TURBINES AND COMPRESSORS USED IN HEAT RECOVERY EQUIPMENT IN LARGE PLANTS SUCH AS OIL REFINERIES. THE NINE-YEAR EXEMPTION FOR THE JOINT UNDERTAKING--NORMALLY PROHIBITED UNDER THE TREATY OF ROME--WAS GRANTED ON THE GROUNDS THAT THE CONSIDERABLE ECONOMIC ADVANTAGES, INCREASED TECHNICAL KNOW-HOW, AND WIDER PRODUCT RANGE FOR STORK AND THE EASIER PENETRATION OF THE EUROPEAN MARKET FOR DE LAVAL, JUSTIFIED THE EXEMPTION. THE COMMISSION ALSO HELD THAT BECAUSE THE FIRMS TOGETHER HELD ONLY A 10-15 PERCENT MARKET SHARE, NO MAJOR DISTORTION TO COMPETITION

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WOULD RESULT.

3. THE TWO CASES REFUSED EXEMPTION BY THE COMMISSION WERE DECIDED ON THE PRINCIPLE THAT THE SIZE OF THE COMPANIES AND THE OLIGOPOLISTIC STRUCTURE OF THE MARKETS WOULD RESULT IN ELIMINATION OF COMPETITION IN A SUBSTANTIAL PART OF THE MARKET. SHV AND CHEVRON HAD PROPOSED A PARTIAL MERGER INVOLVING THE MARKETING OF CERTAIN PETROLEUM PRODUCTS. BAYER & GISH SOUGHT TO CREATE A JOINT VENTURE FOR THE MANUFACTURE OF RAW PENICILLIN AND AN INTERMEDIATE PENICILLIN PRODUCT. THE COMMISSION HELD THAT SUCH FINANCIAL AND MANAGEMENT COOPERATION IN THE IMPORTANT EARLY STAGE OF PRODUCTION WOULD LEAD TO FURTHER COOPERATION BETWEEN THE PARENT COMPANIES ON THE MARKETS FOR PROCESSED PENICILLIN AND FINAL PRODUCTS.

4. COMMISSION OFFICIALS INDICATE THAT MORE THAN FIFTY PROPOSED JOINT VENTURES HAVE BEEN SUBMITTED WITH REQUESTS FOR ARTICLE 85 (3) EXEMPTIONS. AS THEY MUST BE CONSIDERED ON A TIME-CONSUMING CASE-BY-CASE BASIS, PROGRESS TOWARDS FURTHER CLARIFICATION OF THE JOINT

VENTURE POLICY WILL BE SLOW. HINTON

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